

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

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4 In the Matter of:

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6 AMAN RESORTS GROUP LIMITED

7 AND AMAN RESORTS GROUP Case No. 16-10517-scc

8 LIMITED, BY CARPENTARIA

9 MANAGEM,

10

11 Debtors.

12 - - - - - x

13 AMAN RESORTS GROUP LIMITED,

14 Plaintiff,

15 v. Adv. Case No. 16-01039-scc

16 PONTWELLY HOLDING COMPANY

17 LIMITED, ET AL.,

18 Defendants.

19 - - - - - x

20

21 U.S. Bankruptcy Court

22 One Bowling Green

23 New York, New York

24

25

March 28, 2016

10:04 AM

B E F O R E :

HON SHELLEY C. CHAPMAN

U.S. BANKRUPTCY JUDGE

Hearing re: Doc #8 Motion to Withdraw as Attorney

Hearing re: Doc #10 Motion to (A) Strike the Answer to  
Involuntary Petition and Consent to Entry of Order for  
Relief, (B) Dismiss Chapter 11 Case, and (C) Impose  
Attorney's Fees, Costs, and Sanctions

Hearing re: Adversary 16-01039 - Doc #4 Motion to Withdraw  
as Attorney

Transcribed by: Dawn South

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23 By: GREG ZIPES, ESQ.

1 P R O C E E D I N G S

2 THE COURT: Please have a seat. How is everyone  
3 this morning?

4 UNIDENTIFIED SPEAKER. Good, thank you.

5 THE COURT: All right. Who'd like to start?

6 MR. GLENN: Good morning, Your Honor.

7 THE COURT: Good morning.

8 MR. GLENN: Andrew Glenn, Kasowitz, Benson, Torres  
9 & Friedman on behalf of Aman Resorts Group Limited.

10 There are issues with who is representing whom in  
11 this case, Your Honor, so to simplify that issue, as a  
12 starting point, Mr. Baldiga and I have agreed that his  
13 withdrawal motion could go forward first, if Your Honor so  
14 agrees, and then we would proceed with the motion to strike  
15 and motion to dismiss.

16 THE COURT: Is Mr. Gross here? First before we do  
17 anything I want someone to explain to me how we got here.

18 MR. GLENN: I can go through the facts, but I  
19 wasn't there, so.

20 THE COURT: I want someone to explain to me how we  
21 got here. This started with a handwritten involuntary  
22 petition, signed by Kent Gross, and it devolved into today.  
23 So I would like somebody, who has knowledge of the facts, to  
24 tell me what is going on, and then we can get to motions and  
25 consequences.

1 Is somebody here representing the ad hoc group?

2 All right. There must be somebody in this room who knows  
3 how this started and what is going on. I'm going to look at  
4 Brown Rudnick.

5 MR. BALDIGA: Good morning, Your Honor.

6 THE COURT: Good morning.

7 MR. BALDIGA: William Baldiga of Brown Rudnick.

8 Your Honor, as you know, we have two petitions  
9 here.

10 THE COURT: Right.

11 MR. BALDIGA: An involuntary petition filed by  
12 three creditors.

13 THE COURT: Right.

14 MR. BALDIGA: Then an amended or supplemental,  
15 wasn't clear on its face, but a further petition --  
16 involuntary petition filed by four additional creditors.

17 THE COURT: Right.

18 MR. BALDIGA: Faced with that and a direction from  
19 an entity that purported to be authorized to act for Aman  
20 Resort Groups Limited, the debtor in this case, we did file  
21 a consent.

22 THE COURT: Who called you? What person? What  
23 person called you to tell you what to do?

24 MR. BALDIGA: Several, Your Honor. We were first  
25 engaged in August of 2015 by the entity -- one of the two

1 controlling entities for Aman Resorts Group Limited, ARGO,  
2 as it's called, PHRL to represent ARGO in a Chapter 11 to be  
3 filed.

4 THE COURT: Okay. I'm asking a specific question.  
5 An entity doesn't make a phone call, a person makes a phone  
6 call.

7 MR. BALDIGA: Several people then, Your Honor.  
8 Omar Amanot (ph) is one. Carolyn Turnbull, and a London law  
9 firm, Candey law firm, all were speaking to some extent  
10 together for the company.

11 THE COURT: Okay. All right. Go ahead, you can  
12 continue.

13 MR. BALDIGA: I also spoke to briefly the BVI  
14 joint liquidators -- or representative of the joint  
15 liquidator because there was a preliminary appointment of  
16 joint liquidators in a BVI proceeding at one point. That  
17 appointment was then stayed or rescinded pending appeal, and  
18 then in or about January of this year that appointment was  
19 made, again, in the BVI court.

20 THE COURT: Okay. Where does Mr. Gross come into  
21 the picture?

22 MR. BALDIGA: I don't -- I mean I can't speak for  
23 Mr. Gross. He did file both petitions.

24 THE COURT: Okay. So he filed the petitions and  
25 then you appeared and consented. So what happened between

1 his filing of the petitions and your coming into the  
2 picture?

3 MR. BALDIGA: In -- so I should go back to the  
4 August retention, Your Honor.

5 In August Aman Resorts held 100 percent of the  
6 shares of a company called Silverlink. Silverlink is the  
7 company that owns Aman Resorts -- operates Aman Resorts.

8 THE COURT: Right.

9 MR. BALDIGA: So Silverlink is the operating  
10 company.

11 THE COURT: Uh-huh.

12 MR. BALDIGA: Aman Resorts is merely a holding  
13 company owning 100 percent of the shares.

14 In August it was facing imminent foreclosure of  
15 those shares from a -- its secured lender, Pontwelly.  
16 Pontwelly is affiliate of Mr. Duronin (ph). Mr. Duronin is  
17 himself, through another entity, one of the owners of ARGO.  
18 The other owner of ARGO as I understand it is P -- we call  
19 it PHRL. They both -- Mr. Duronin's entity and the PHRL  
20 entities then are both co-owners of PHRGO, which is the  
21 owner of Aman Resorts.

22 I was retained through the PHRL entity to be  
23 prepared to represent --

24 THE COURT: Just let me be -- let me stop you for  
25 a moment. To be clear, I'm not asking you to waive



1 attorney/client privilege. So at any point if I'm asking  
2 you a question that would invade the privilege you of  
3 course --

4 MR. BALDIGA: I appreciate that, Your Honor.

5 THE COURT: -- should stop -- should stop short.

6 MR. BALDIGA: And it's a fuzzy line, I admit.

7 THE COURT: I understand.

8 MR. BALDIGA: So I'm trying to be responsive to  
9 the Court.

10 THE COURT: I'm trying to -- I appreciate that.  
11 I'm trying to get to the facts, but I'm not at all  
12 requesting or demanding that you waive attorney/client  
13 privilege.

14 MR. BALDIGA: I appreciate that very much.

15 THE COURT: Okay.

16 MR. BALDIGA: And, Your Honor, I would appreciate  
17 that if I were to say something inadvertently that did  
18 invade that it's not taken as some --

19 THE COURT: As a blind waiver.

20 MR. BALDIGA: -- general waiver. I'm trying to be  
21 responsive.

22 THE COURT: Absolutely.

23 MR. BALDIGA: Thank you.

24 The -- I won't go too deep into the facts as to  
25 the foreclosure because the adversary proceeding filed in

1 this case lays that out I think in quite some detail, but  
2 there was in fact a foreclosure. It was a strict  
3 foreclosure where Mr. Duronin's entity took out of strict  
4 foreclosure the stock to satisfy that loan. That loan was  
5 somewhere in the range of 175- to \$200 million, depending on  
6 the accrual of interest and cost and so forth. And at that  
7 point we thought, based on the information that we were  
8 given, that that was an avoidable transaction.

9 There was then some discussion, but very sporadic,  
10 over the next several months about whether ARGO would in  
11 fact file. There are several, and it now looks like  
12 inconsistent, orders of other courts authorizing various  
13 entities to petition ARGO into bankruptcy, but there is one  
14 BVI order of which we were very much made aware, through the  
15 Candey law firm, in about September authorizing PHRL to put  
16 ARGO into bankruptcy.

17 When the involuntary petitions were filed we had  
18 already, through the work from August forward, thought that  
19 there was a good reorganization purpose for ARGO to be in  
20 Chapter 11 to test the validity of that sale, for the  
21 reasons in that adversary proceeding; however, there was not  
22 clarity as to who, if anyone, could petition ARGO -- a  
23 voluntary petition for ARGO, so we couldn't undertake to do  
24 that. But when the involuntary --

25 THE COURT: By the way, just coincidentally

1       though, that's not a proper purpose for filing an  
2       involuntary. I mean there's a statute that lays out what an  
3       involuntary is supposed to be about. Testing the validity  
4       of a transfer is not -- it's not one of the basis for  
5       putting an entity into an involuntary.

6               MR. BALDIGA: Well, Your Honor, I -- we certainly  
7       are familiar --

8               THE COURT: If the entity otherwise qualifies for  
9       a Chapter 11 protection then certainly one of the things  
10      incident to a proceeding would be to explore transfers. But  
11      simply identifying the transfer and deciding that it needs  
12      to be explored is not a sufficient basis for filing an  
13      involuntary.

14              MR. BALDIGA: I do appreciate, Your Honor, that an  
15      entity has to be eligible for Chapter 11 relief --

16              THE COURT: Rights.

17              MR. BALDIGA: -- and it has to be under the  
18      Kingston Square (ph) and other prodigy.

19              THE COURT: Right.

20              MR. BALDIGA: There has to be a reorganization  
21      purpose.

22              THE COURT: Right. So here we have insiders  
23      filing a petition.

24              MR. BALDIGA: At least some of them are insiders.

25              THE COURT: But the -- Mr. Amanot certainly is.

1 MR. BALDIGA: Well, yes, Your Honor, I would say  
2 that except if the allegations presented by Kasowitz are  
3 correct none of the petitioners would be insiders after  
4 August of 2015.

5 THE COURT: I see your point.

6 MR. BALDIGA: And so even on that issue, Your  
7 Honor, there's a lot of ambiguity.

8 But yes, at one point at least some of the  
9 petitioning creditors were insiders, and it appears that for  
10 the six months or so prior to the commencement of the case  
11 they maybe were not. But --

12 THE COURT: Okay. So at a certain point then your  
13 firm determined that it could no longer continue to act?

14 MR. BALDIGA: Yes. And for the reasons that we  
15 could not ourselves disclose in our papers however in the  
16 papers that were filed by other parties after that I think  
17 it's become clear on the record what occurred and that  
18 mandates withdrawal in our mind.

19 THE COURT: All right. All right. Thank you very  
20 much.

21 MR. BALDIGA: Thank you, Your Honor.

22 THE COURT: All right. So now we can go back. So  
23 there is no opposition to the withdrawal?

24 MR. GLENN: There was a limited objection --

25 THE COURT: Right.

1 MR. GLENN: Oh, to the withdrawal. To the  
2 withdrawal. No, Your Honor.

3 THE COURT: To the withdrawal.

4 MR. GLENN: No.

5 THE COURT: To the withdrawal.

6 MR. GLENN: No objection.

7 THE COURT: All right. So I'm going to grant the  
8 withdrawal, but with the understanding that we need -- we're  
9 going to get to the bottom of all of this. And to the  
10 extent that there are going to be costs that need to be  
11 reimbursed or consequences of this proceeding being  
12 commenced, if it in fact does not continue, that the Brown  
13 Rudnick firm will be in the mix for those determinations.

14 The withdrawal is simply frankly taking you at  
15 your word that under the rules -- the ethical rules you can  
16 no longer act and I have no opposition and therefore you can  
17 be relieved, but with the reservation as to potential  
18 consequences for -- I won't say the improper filing of an  
19 involuntary, because you did not file it, but we just have  
20 to get to the end before you can be fully out of the case.

21 MR. BALDIGA: Understood, Your Honor.

22 THE COURT: All right? Okay.

23 All right. So now the Kasowitz firm is  
24 representing the debtor; is that correct?

25 MR. GLENN: Correct, Your Honor.

1 THE COURT: Okay. So I guess we now have to turn  
2 also to the ad hoc group who seems to be opposing the  
3 dismissal of this action. Is that right?

4 MR. GLENN: That's the only filing we saw, yes.

5 THE COURT: Okay. And then we also have a motion  
6 by a number of the allegedly petitioning creditors. Mr. --  
7 is it Mr. Zecha?

8 MS. STRICKLAND: Yes, Your Honor.

9 THE COURT: Mr. Robinson, and Ms. Turnbull.  
10 Ms. Strickland -- all right. So there's also a pending  
11 motion to withdraw those petitioning creditors from the  
12 involuntary petition.

13 So perhaps it would be a good time now to hear  
14 from the ad hoc group as to whether they in fact are taking  
15 a position that this case should continue.

16 MR. GOLDINSTEIN: Good morning, Your Honor.

17 THE COURT: Good morning.

18 MR. GOLDINSTEIN: Arkady Goldinstein, DLA Piper  
19 LLP --

20 THE COURT: Yes.

21 MR. GOLDINSTEIN: -- (US) on behalf of the ad hoc  
22 group.

23 Your Honor, there were many allegations made by  
24 both sides in the papers that have been filed, and the ad  
25 hoc group takes no position with either the side that's

1 controlled by Mr. Duronin or the side that's controlled by  
2 Mr. Amanot. But the members of the ad hoc group do believe  
3 that they have whole valid claims against ARGL. And today  
4 three of them provided proof of those claims to us,  
5 documentation supporting claims. One we understand we've  
6 been told is traveling and hasn't provided it yet. We were  
7 in the process of investigating those -- well studying them.

8 The members of the ad hoc group believe that the  
9 allegations made in the complaint, even though Brown Rudnick  
10 firm has withdrawn, could potentially, if pursued and turned  
11 out to be valid, will result in substantial recoveries from  
12 the claims that they believe to have be valid claims against  
13 the debtor.

14 And, Your Honor, in light of all the allegations  
15 that have been brought, the ad hoc group believes that a  
16 neutral third party, like a Chapter 11 Trustee, would be  
17 appropriate to investigate and to get to the bottom of all  
18 this just like you said.

19 So -- and as you know, the events have been  
20 unfolding rather quickly. Both sides have had apparently  
21 long exposure to the facts and circumstances. We have been  
22 retained really the weekend before the Monday last week when  
23 we filed our objection. And in light of that we believe an  
24 adjournment would be appropriate, and believe that would be  
25 the best in the interest of the estate and the creditors

1 under the circumstances.

2 THE COURT: Thank you.

3 MR. GOLDINSTEIN: Thank you.

4 THE COURT: Thank you.

5 All right. So the debtor is asking to strike the  
6 answer and the consent to entry of the order for relief and  
7 dismiss the case and impose fees, costs, and sanctions.

8 MR. GLENN: That's correct, Your Honor.

9 THE COURT: All right. Is there anything that  
10 you'd like to add that isn't in your pleadings?

11 MR. GLENN: Well -- excuse me for a minute.

12 THE COURT: Sure.

13 (Pause)

14 MR. GLENN: Your Honor, I don't want to belabor  
15 the record because we submitted to Your Honor a tremendous  
16 amount of paper. I know --

17 THE COURT: Yes, you did.

18 MR. GLENN: -- you've been busy on other matters,  
19 but I think a couple things bear emphasis.

20 Number one, when the limited objection came we  
21 immediately sent a letter to them to try to get a better  
22 understanding of their views about this. And number one,  
23 like we did with Mr. Baldiga, like we did with Mr. Gross, we  
24 demanded that they walk away, but if not give us some proof.

25 THE COURT: Have you had conversations with



1 Mr. Gross?

2 MR. GLENN: We have called him, he has not  
3 returned our messages. We told him we believed he had to  
4 appear in court today because in bankruptcy court you've got  
5 to do what Brown Rudnick did, move to withdrawal, you can't  
6 just --

7 THE COURT: Correct.

8 MR. GLENN: -- walk away from this.

9 THE COURT: Correct.

10 MR. GLENN: None of those --

11 THE COURT: There was no -- I very much wanted him  
12 to be here today, but there was no crisp way to cause that  
13 to occur, and I felt that it'd be better to have you all in  
14 first. But at the next go round he will have to appear.

15 MR. GLENN: Understood.

16 So we asked for some proof that anyone has a valid  
17 claim, anything to show us that they're true creditors of  
18 these estates so we could actually litigate that issue, if  
19 necessary. No one has put forward any evidence of any  
20 claims. Obviously our papers go into chapter and verse as  
21 to the reasons why an involuntary wasn't otherwise  
22 appropriate. So even if they had put forth claims we still  
23 think the case should have been dismissed. But no one has  
24 done that.

25 We've done more background research on the ad hoc

1 group. There appear to be a tremendous amount of  
2 connections with Mr. Amanot in that group, including the  
3 fund investment, and pardon me if I've not pronounced the  
4 French correctly, as being the litigation funding entity for  
5 Mr. Amanot for the historical litigation in London.

6 So we think, as Your Honor said, this is all  
7 litigation stirred up by insiders. Whether they are  
8 insiders now or whether they were insiders six months ago I  
9 think that's not really the point. They're not arms length  
10 players with a true arms length creditor purpose to bring  
11 these proceedings. This is just more of a game. Much more  
12 of harassment to us, which is why the Brown Rudnick withdrew  
13 from this case.

14 So unless Your Honor has any other questions I'm  
15 prepared to rest on the papers.

16 THE COURT: Okay. All right. So I'm just going  
17 to try to do this correctly procedurally.

18 Ms. Strickland, why don't you come on up.

19 MS. STRICKLAND: Good morning.

20 THE COURT: How are you?

21 So I think it's probably pretty clear that I'm  
22 moving toward dismissing this case. And before I do that I  
23 just want the -- these orders are going to have to be  
24 entered in the right order, so to speak.

25 So is there anyone who opposes the motion to

1 withdraw the petition in creditors' claims from the  
2 involuntary petition that's entered at docket 18 that's been  
3 filed on behalf of Mr. Zecha, Mr. Robinson, and  
4 Ms. Turnbull?

5 MR. GLENN: No objection, Your Honor, as long as  
6 it's done in the same terms as otherwise. That, you know,  
7 we have to look into this and everyone reserves their  
8 substantive rights.

9 THE COURT: There's nothing on the face of this  
10 pleading that indicates -- well, there's nothing that  
11 indicates anything other than that these petitioning  
12 creditors are making a representation that they had no part  
13 in this, but with respect to keeping the playing field  
14 level, yes, those same conditions will apply.

15 But Ms. Strickland, I'm going to grant the  
16 motion --

17 MS. STRICKLAND: Thank you.

18 THE COURT: -- to how your clients to withdraw.

19 MS. STRICKLAND: Thank you.

20 THE COURT: All right? Thank you.

21 Okay. With respect to the argument that we should  
22 wait and see and see if there are additional creditors who  
23 have bona fide claims who would be able to file or fill the  
24 shoes, if you will, of the petitioning creditors, that's not  
25 the way it works.

1           This case is going to be dismissed, but with a  
2       reservation of jurisdiction to impose sanctions and other  
3       appropriate relief both under Rule 11 and under the  
4       Bankruptcy Code. If in fact there are other creditors who  
5       believe that they have bona fide claims and otherwise could  
6       get together and file an involuntary petition that would be  
7       appropriate they're free to do so, but this particular case  
8       is going to be dismissed, subject to a reservation of  
9       jurisdiction to entertain motions for fees, costs, and other  
10      sanctions. All right?

11           So I will need by my count three orders. One  
12      order with respect to the Brown Rudnick withdrawal, an order  
13      from the Willkie Farr firm, and an order from the Kasowitz  
14      firm. And I would ask that you all share everything with  
15      everyone who's filed papers, including counsel for the ad  
16      hoc group. All right?

17           Mr. Zipes, how are you today?

18           MR. ZIPES: Very well, Your Honor.

19           THE COURT: You could probably sense that I'm a  
20      little unhappy about this.

21           MR. ZIPES: Yes.

22           THE COURT: All right? This Court has a lot to  
23      do. This is not -- does not appear to be an appropriate use  
24      of the bankruptcy process nor a use of the bankruptcy  
25      process that's consistent with the integrity of the

1 bankruptcy process, subject obviously to the development of  
2 further facts.

3 Does your office have a position?

4 MR. ZIPES: Your Honor, we -- the Court ruled, we  
5 would have to the extent we were asked we didn't file papers  
6 but we were in support of dismissal with the reservation and  
7 also we intend to be in contact with the Kasowitz firm and  
8 others to discuss possible next steps.

9 THE COURT: All right. Thank you.

10 Okay. Does anyone else wish to be heard on  
11 anything relating to Aman Resorts Group Limited?

12 What I would like to do is put this on the  
13 calendar for further proceedings with respect to requests  
14 for sanctions, if in fact the parties intend to proceed with  
15 that. Do you intend to proceed with that?

16 MR. GLENN: We do, Your Honor.

17 THE COURT: All right. And how do you intend to  
18 proceed?

19 MR. GLENN: I think there are two levels of --

20 THE COURT: There are.

21 MR. GLENN: -- recovery for us. I think one is  
22 almost automatic when you file an involuntary petition and  
23 you fail the presumption is you get fees.

24 THE COURT: Right.

25 MR. GLENN: Then --

1 THE COURT: Without regard to bad faith.

2 MR. GLENN: Exactly.

3 THE COURT: Then there's a bad faith element.

4 MR. GLENN: I think we need discovery into the bad  
5 faith issue. We've served some formally, some informally.  
6 We would proceed with some discovery in between now and the  
7 time of the hearing. And then the application would be  
8 crystallized then.

9 THE COURT: All right. So do you want a hearing  
10 date or do you want a status conference?

11 MR. GLENN: I think what we'd like to do is get  
12 back -- confer with our client and get back to the Court  
13 after consulting with the other parties about the process.  
14 Maybe we can do some of this at least consensually, and then  
15 depending on the time we need and other parties' needs we'll  
16 have a date for Your Honor.

17 THE COURT: All right.

18 MR. GLENN: But after the hearing.

19 THE COURT: Well whatever date you pick, whether  
20 it's for status or a hearing, we're going to need a notice  
21 put on the docket and we will -- we'll also want it to be  
22 clear that Mr. Gross will need to appear in person.

23 MR. GLENN: Okay. I was going to ask Your Honor  
24 if we should give him an order to show cause on that return  
25 date so it's amply clear that not only his presence is

1 requested, but in fact required.

2 THE COURT: Yes.

3 MR. GLENN: Thank you.

4 THE COURT: All right? Anything else?

5 Okay. Thank you all for coming down here on this  
6 rainy day.

7 UNIDENTIFIED SPEAKER: Thank you.

8 THE COURT: Have a good one.

9 (Whereupon these proceedings were concluded at 10:29  
10 AM)

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I N D E X

RULINGS

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## C E R T I F I C A T I O N

I, Dawn South, certify that the foregoing transcript is a true and accurate record of the proceedings.

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Date: March 29, 2016

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